

REMARKS

Claims 2, 7, 9, 12-13, 19, 25, 27-29, 31-33, 35-40, 45, and 53 are pending in this application. According to the April 28, 2009 Office Action, claims 2, 7, 9, 12-13, 19, 25, 27-29, 31-33, 35-40, 45, and 53 are rejected.

We have amended independent claim 13, have amended dependent claims 2, 7, 9, 12, 19, 25, 27-29, 32, and 35-40, and have added new dependent claims 54-59 to recite particular embodiments that we, in our business judgment, have currently determined to be commercially desirable. We have canceled independent claims 31, 33, and 53. We will pursue the subject matter of the previously presented and canceled claims in one or more continuing applications.

The following claims are under consideration:

- Independent claims 7, 13, 19, and 32.
- Dependent claims 2, 9, 12, 25, 27-29, 35-40, 45, and 54-59.

I. AMENDMENTS TO THE SPECIFICATION MADE MAY 1, 2008

At paragraph 7 of the Office Action, the Examiner indicates that the amendment to the Specification made on May 1, 2008 has not been entered because the amendment does not conform to 37 CFR 1.125(b) and (c). We cannot ascertain the basis for this rejection in that Rule 1.125 pertains to a substitute specification. However, the amendment to the Specification made on May 1, 2008 was not made via substitute specification.

The amendment made to the Specification on May 1, 2008 is being resubmitted herewith, as discussed below. Entry of the amendment is respectfully requested.

II. AMENDMENT TO THE SPECIFICATION

The Specification is being amended between paragraphs [0007] and [0008]. Support for the amendment may be found, for example, in claims 3, 4, 6-8, 12-13, 16-19, and 24 of the Application as originally filed. While we do not agree with the objection raised by the Examiner at paragraph 12 of the Office Action, the objection is now moot in view of the amendment.

III. REJECTION OF CLAIMS UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

At paragraphs 13-14 of the Office Action, the Examiner rejects claims 12-13, 31-33, 35-36, 38, and 53 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written

description requirement. The Examiner fails to establish a *prima facie* case that the claims do not comply with the written description requirement.

Specifically, with regard to the burden on an examiner in rejecting claims under the written description requirement, MPEP 2163.04 provides:

A description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the examiner to rebut the presumption. ... The examiner, therefore, must have a reasonable basis to challenge the adequacy of the written description. The examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. ... In rejecting a claim, the examiner must set forth express findings of fact which support the lack of written description conclusion These findings should: ... (B) Establish a *prima facie* case by providing reasons why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed in view of the disclosure of the application as filed. (emphasis added).

In rejecting the claims, the Examiner fails to provide any reasoning as to why a person skilled in the art at the time the application was filed would not have recognized that the inventor was in possession of the invention as claimed. Accordingly, the Examiner fails to make a *prima facie* case.

In addition, in the event the Examiner may be rejecting the claims on the basis that claim terms are allegedly not found literally within the Specification, such a rejection under 35 U.S.C. § 112, first paragraph, has no basis. See In re Alton, 76 F.3d 1168, 1175 (Fed. Cir. 1996) ("If, on the other hand, the specification contains a description of the claimed invention, albeit not in *ipsis verbis* (in the identical words), then the examiner or Board, in order to meet the burden of proof, must provide reasons why one of ordinary skill in the art would not consider the description sufficient."); MPEP 2163.02 ("The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.").

Nonetheless, we respectfully submit that the rejection of claims 12-13, 31, 33, 38, and 53 is moot in view of the claim amendments and cancellations. Regarding claims 32, 35, and 36, as previously noted support may be found, for example, at least at paragraph [0019], which states in part:

Then, the next price for the crossing is preferably determined as follows.
A volume-based weighted average or other suitable metric is calculated

between the previously determined match--i.e., 100.02+--and the offer side of the market maker--i.e., 100.03. Thus, the crossing spread is to buy a suitable volume (in this example 100 was still on the board) at 100.02+ and to sell a suitable volume at 100.0275 (the weighted average between the previously determined match and the offer side of the market maker.) Paragraph [0019], lines 1-11.

The above noted portion of paragraph [0019] provides an example when there is an imbalance on the buy side. A similar example applies when there is an imbalance on the sell side (see also paragraph [0032], lines 5-9).

IV. REJECTION OF CLAIMS UNDER 35 U.S.C. § 101

At paragraphs 15-16 of the Office Action, the Examiner rejects previously presented claims **2, 7, 9, 12, 25, 27-29, 31-33, and 35-40** under 35 U.S.C. § 101 as being directed to non-statutory subject matter. We respectfully submit that the rejection is now moot in view of the claim amendments/cancellations.

V. REJECTION OF CLAIMS UNDER 35 U.S.C. § 103

At paragraphs 17-19 of the Office Action, the Examiner rejects previously presented claims **2, 9, 12-13, 25, 27-29, 31, 33, 35-40, 45, and 53** under 35 U.S.C. 103(a) as being unpatentable over Rickard et al., International Publication No. WO 00/26834, in view of Rickard et al., International Publication No. WO 98/12659 and Harts et al., International Publication No. WO 01/04817. The Examiner fails to establish a *prima facie* case of obviousness of any of the claims. Nonetheless, we respectfully submit that the rejection is now moot in view of the claim amendments and cancellations (see below, Subsection VI Allowable Subject Matter).

VI. ALLOWABLE SUBJECT MATTER

We note with appreciation that the Examiner indicates at paragraphs 20-22 of the Office Action that previously presented dependent claims **7, 19, and 32** would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Regarding the Examiner's comments in paragraphs 20-22 regarding the objection to the Specification and the Section 101 and Section 112 rejections, we draw the Examiner's attention to the above discussions.

For the sole purpose of expediting prosecution of this application:

1. **Claim 7**: We have amended dependent claim 7 to be an independent claim that includes limitations of claim 33, from which it depended. We note to the Examiner that claim 33 recited:

filling at least in part the order imbalance at the second crossing price using liquidity provided by the market maker that provided the second bid-offer liquidity spread.

and that claim 7 recites:

filling ..., at least in part, the order imbalance at the second crossing price using volume provided by one of the plurality of market makers.

2. **Claim 19**: We have amended dependent claim 19 to be an independent claim that includes limitations of claim 53, from which it depended. We note to the Examiner that claim 53 recited:

fill at least in part the order imbalance at the second crossing price using liquidity provided by the market maker that provided the second bid-offer liquidity spread.

and that claim 19 recites:

fill at least in part the order imbalance at the second crossing price using volume provided one of the plurality of market makers.

3. **Claim 32**: We have amended dependent claim 32 to be an independent claim that includes limitations of claim 31, from which it depended. We note to the Examiner that claim 31 recited:

filling at least in part the order imbalance at the second crossing price using liquidity provided by the market maker that provided the selected bid-offer liquidity spread.

and that claim 32 recites:

filling ..., at least in part, the order imbalance at the second crossing price using volume provided by one of the plurality of market makers.

For the sole purpose of expediting prosecution of this application:

1. We have canceled independent claims 31, 33, and 53.

2. We have amended the claims such that dependent claims **2, 9, 12, 25, 27-29, and 35-40** now depend from claims **7 or 32**.
3. We have amended independent claim **13** to recite limitations similar to claim **32**. Claim **45** continues to depend from claim **13**.

VII. NEW CLAIMS

New claims **54-59** depend from independent claims **7, 13, or 19** and recite limitations similar to claims **29, 35-36, and 39**.

VIII. AUTHORIZATION FOR EMAIL COMMUNICATION

Recognizing that Internet communications are not secure, Applicants hereby authorize the USPTO to communicate with any authorized representative concerning any subject matter of this application by electronic mail. Applicants understand that a copy of these communications will be made of record in the application file.

IX. GENERAL AUTHORIZATION FOR ALL FEES DURING THE PENDENCY OF THIS APPLICATION

For the entire pendency of this application, please charge all fees to deposit account 50-3938.

X. CONCLUSION

We respectfully submit that the claims are in condition for allowance. We request that the application be passed to issue in due course. The Examiner is urged to telephone the undersigned representative at the number noted below if it will advance the prosecution of this application, or with any suggestion to resolve any condition that would impede allowance.

Respectfully submitted,

/Glen R. Farbanish/

October 28, 2009
Date

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